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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BASHORE, ALAIN L

ART UNIT PAPER NUMBER

1762

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/966,909

Applicant(s)

DRUMMOND ET AL.

Examiner

Alain L. Bashore

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. In view of the appeal brief filed on 2-9-05, PROSECUTION IS HEREBY REOPENED. The errors in claim identification in the previous office action, dropping of 35 U.S.C 101 rejection, and new rejections utilized requires reopening of the prosecution. A complete rejection is set forth below. To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "relatively short" is considered vague and indefinite. What is "relatively short" to one may not be relatively short to another.

Claim Rejections - 35 USC § 102 / 103

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4, 6, and 18 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Joao et al.

Joao et al discloses a method and apparatus comprising: receiving with an automated banking machine at least one first wireless communications signal from a portable wireless device which may be a voice communications device (para 0257; fig 10). There is disclosed sending and receiving first and second network communications to and from a server all through operation of the banking machine (para 0246). There is also disclosed sending through operation of the banking machine at least one second wireless communication signal to the portable wireless device corresponding to the second network communication signal (para 0259).

Joao et al discloses a network that is not proscribed to a limited geographical area. Because of this, it is maintained that Joao et al inherently discloses a wide area network or WAN. As an alternative interpretation, inherency is not assumed. If not assumed, it would have been obvious to one with ordinary skill in the art to include such to Joao et al because Joao et al teaches use of the Internet as part of the network (para 0053).

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7. Claims 7, 11, 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joao et al as applied to claims above, and further in view of Stewart et al.

Joao et al does not explicitly disclose a "wireless access hub".

Stewart et al discloses a wireless access hub (fig 1).

It would have been obvious to one with ordinary skill in the art to include a wireless access hub as in claimed relationship because Stewart et al teaches hub access useful in business environment (col 1, lines 26-43).

8. Claims 5, 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joao et al as applied to claims above, and further in view of Bansal et al.

Joao et al discloses a voice communication device (para 0027).

Joao et al does not explicitly disclose that the portable wireless device includes memory with modifiable cash value data.

Bansal et al discloses a portable wireless device that includes memory with modifiable cash value data (col 3, lines 45-57).

It would have been obvious to one with ordinary skill in the art to include disclose that the portable wireless device includes memory with modifiable cash value data because Bansal et al teaches cash transaction are made by use of wireless devices is desired (col 1, lines 21-41).

9. Claims 2, 9-10, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joao et al as applied to claims above, and further in view of Laybourn et al.

Joao et al nor Stewart et al disclose a usage fee or a fee charged responsive to device enabled to communicate with network.

Laybourn et al discloses a fee charged responsive to device enabled to communicate with network (col 1, lines 18-25).

It would have been obvious to one with ordinary skill in the art to include a fee charged responsive to device enabled to communicate with network because Laybourn et al teaches such as conventional in the wireless art (col 1, lines 20-21).

10. Claims 3, 8, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joao et al as applied to claims above, and further in view of Jones et al.

Joao et al does not disclose a cash dispenser (responsive to input from the wireless device) from the automated banking machine.

Jones et al discloses dispensing cash from the automated banking machine using a cash dispenser (col 2, lines 42-46; fig 1a).

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It would have been obvious to one with ordinary skill in the art to include a cash dispenser of Jones et al because Joao et teaches dispensing cash per se (para 0189).

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1 and 18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 5, 13-17, 18, 25-27, of U.S. Patent No. 6,702,181. Although the conflicting claims are not identical, they are not patentably distinct from each other because recitations encompass what is claimed by the instant application, i.e.: "signals" encompass "messages".

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13. Claims 1, 6 and 18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6, 15, 19, 20-21 of U.S. Patent No. 6,796,490. Although the conflicting claims are not identical, they are not patentably distinct from each other because recitations encompass what is claimed by the instant application, i.e.: "signals" encompass "messages".

14. Claims 1 and 18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 15, 17, 21 of U.S. Patent No. 7,040,533. Although the conflicting claims are not identical, they are not patentably distinct from each other because recitations encompass what is claimed by the instant application", i.e.: "signal" encompasses both "messages" and "transmitted financial customer account number".

Conclusion


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 571-272-6739. The examiner can normally be reached on about 7:30 am to 5:00 pm (Mon. thru Thurs.).

Regarding all Class 705 applications, the management contact regarding examination is: Vincent Millin (SPE, art unit 3624) at 571-272-6747.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Alain L. Bashore
Primary Examiner
Art Unit 1762